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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,468	11/08/2001	Marvin Lewis JR.	18622.007	4368

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Edward W. Rilee
MACCORD MASON PLLC
P.O. Box 2974
Greensboro, NC 27402

EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,468

Applicant(s)

LEWIS, MARVIN

Examiner

Jennifer A. Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 10, 2004 has been entered. The Applicant's Amendments and Accompanying Remarks, filed November 10, 2004, have been entered and have been carefully considered. Claims 1 and 9 are amended, claim 8 is cancelled and claims 1 – 7 and 9 – 15 are pending. In view of Applicant's amendments, the Examiner withdraws all previously set forth rejections as detailed in the previous Office Action. Despite these advances, the invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 – 7 and 9 – 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 21 of U.S. Patent No. 6,698,251.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both directed to a crochet-knitted mattress closing tape having a base fabric side and a patterned fabric side comprising at least four fillings and wherein the pattern fillings form a diamond pattern.

4. Claims 1 – 7 and 9 – 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 13 of U.S. Patent No. 6,684,461.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both directed to a crochet-knitted tape having a base fabric side and a patterned fabric side comprising at least four fillings and wherein the pattern fillings form a diamond pattern.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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6. Claims 1 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the relevant art that the inventor(s), as the time the application was filed, has possession of the claimed invention. Claims 2 – 7 and 10 – 15 are rejected as being dependent on rejected claims 1 and 9. The phrase “inelastic” in regards to the textile fabric, set of warp yarns and multiple fillings is new matter, because this negative limitation is not literally supported by the specification. *Ex Parte Grasselli*, 231 USPQ 393. There is no mention of “inelastic” in the specification. If Applicant submits that “inelastic” does have support in the specification, please direct the Examiner to the exact page and lines where the support is provided.

Claim Rejections - 35 USC § 102

7. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Deignan et al. (US 5,768,758).

Deignan is directed to a method and apparatus for attachment of upholstery to seats (Title). Deignan notes that the web can also be used as a method attachment for other items of furnishing (column 10, lines 15 – 20).

As to claim 1, Deignan teaches a web knitted on a conventional raschel crochet machine (column 6, lines 40 – 50). The web comprises front and back fillings 34 and 36, warp yarns 38 and elastic yarns 46 (column 6, lines 50 – 55). The Examiner equates the front fillings and back fillings to Applicant’s “inelastic base fillings” and “inelastic pattern fillings”. The Examiner equates the warp yarns 28 to Applicant’s “a set of inelastic warp yarns”. Deignan notes that the needles associated with front and back filling yarns 34 and 36 can move in opposite directions,

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or in the same direction, as desired, depending up on the type of pattern or selvage necessitated by the application (column 6, lines 55 – 60). It should be noted that the fabric structure is “adapted to closely conform to an edge bead of a mattress” is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Additionally, it should be noted that the Examiner has given no patentable weight to “a mattress closing tape”. It has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As to claim 9, Deignan teaches a web knitted on a conventional raschel crochet machine (column 6, lines 40 – 50). The web comprises front and back fillings 34 and 36, warp yarns 38 and elastic yarns 46 (column 6, lines 50 – 55). The Examiner equates the front fillings and back fillings to Applicant’s “inelastic base fillings” and “inelastic pattern fillings”. The Examiner equates the warp yarns 28 to Applicant’s “a set of inelastic warp yarns”. Deignan notes that the needles associated with front and back filling yarns 34 and 36 can move in opposite directions, or in the same direction, as desired, depending up on the type of pattern or selvage necessitated by the application (column 6, lines 55 – 60). It should be noted that the Examiner has given no patentable weight to “in combination with a mattress having an edge bead, a mattress closing tape covering and closely conforming to the edge bead of the mattress, the mattress closing tape...”. It has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

8. Claims 2 – 7 and 10 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deignan et al. (US 5,768,758).

As to claims 2 and 10, Deignan teaches in an alternate embodiment for the web adding additional warp and filling yarns to the web to increase the strength and rigidity of the web. It would have been obvious to one of ordinary skill in the art to add additional fillings yarns, such as one additional filling yarn in the base layer and the patterned layer, motivated by the desire to increase the strength and rigidity of the web. It should be noted that the claim limitations of claims 3 – 5 and 11 – 13 are additionally met because the additional filling yarns will create Applicant's "pre-determined pattern". It should be noted that the orientation of the technical back and technical face is irrelevant because the web is reversible.

As to claims 5 - 7 and 13 - 15, Deignan discloses the claimed invention except for that the base fillings traverse in opposing mirror-image relation to each other and the pattern fillings traverse in opposing mirror-image relation to one another and that the pattern fillings form a diamond pattern. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a web where the base fillings traverse in mirror-image relation to one another and the pattern fillings traverse in opposing mirror-image relation to one another and that the pattern fillings form a diamond pattern since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. It should be noted that Deignan notes that the needles associated with front and back filling yarns 34 and 36 can move

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in opposite directions, or in the same direction, as desired, depending up on the type of pattern or selvage necessitated by the application (column 6, lines 55 – 60). In the present invention, one would have been motivated to create a web having the described pattern to create an aesthetically pleasing fabric.

Response to Arguments

9. Applicant's arguments with respect to claims 1 – 7 and 9 - 15 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jen Boyd
9/29/05

Ula Ruddock
Ula C. Ruddock
Primary Examiner
Tech Center 1700